

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Mark Acton, Vice Chairman;
Dan G. Blair;
Tony L. Hammond; and
Nanci E. Langley

Akron–East Station
Akron, Ohio

Docket No. A2011-16

ORDER DENYING APPLICATION FOR SUSPENSION

(Issued June 17, 2011)

On May 16, 2011, Paul J. Connor (Petitioner) filed a petition for review of the Postal Service's decision to close the Akron–East Station.¹ Petitioner also filed an Application for Suspension of the Postal Service determination pursuant to 39 CFR 3001.114(b).² In Order No. 733, the Commission directed the Postal Service to file the administrative record (by May 31, 2011) and its response to the Application for Suspension (by May 26, 2011).³

¹ Petitioner for Review Received from Paul J. Connor, May 16, 2011.

² Application for Suspension of Determination, May 16, 2011 (Application for Suspension).

³ Notice and Order Accepting Appeal and Establishing Procedural Schedule, May 19, 2011 (Order No. 733).

On June 10, 2011, the City of Akron, Ohio filed a motion in support of the Petitioner's Application.⁴ It notes that the Postal Service failed to file a response to the Application for Suspension and urges the Commission to grant it. *Id.* at 1.⁵

Belatedly, on June 16, 2011, the Postal Service filed its response, urging that the Application for Suspension be denied.⁶

Petitioner argues that there will be irreparable harm to the re-emerging Goodyear Heights community if its postal facility ceases operations before final Commission action on his appeal. Application for Suspension at 1, 6, 12.

The Commission must evaluate the Application for Suspension in light of the Postal Service's well-publicized financial difficulties. The Postal Service has indicated it will be unable to meet its financial obligations by the end of September 2011. The Postal Service begins its Response by reiterating its view that 39 U.S.C. 404(d) does not apply to any facility it has designated for administrative purposes as a station. Response at 1. The Commission rejects this argument, as it has done in numerous prior proceedings.

The Postal Service also indicates that it will submit more detailed arguments in its answer to the Petition for Review, due July 11, 2011. *Id.* at 3. In addition, in a separate pleading, the Postal Service affirms that it will file the administrative record as required by Order No. 733.⁷ It is the Commission's expectation that in its more detailed response, the Postal Service will address the merits of the matter before it.

⁴ City of Akron, Ohio's Motion in Support of Petitioner Paul J. Connor's Application for Suspension of Determination, June 10, 2011.

⁵ On June 16, 2011, the City of Akron provided notice that its suit against the Postal Service had been removed to federal district court. See City of Akron, Ohio's Comment, June 16, 2011.

⁶ Response of United States Postal Service to Petitioner's Application for Suspension of Discontinuance for the East Akron Station, Akron, Ohio 44305, June 16, 2011 (Response). The Response was accompanied by a Motion of the United States Postal Service for Late Acceptance of Response of United States Postal Service to Petitioner's Application for Suspension of Discontinuance for the East Akron Station, Akron, OH 44305. The motion is granted.

⁷ Response of United States Postal Service to City of Akron, Ohio's Motion to Compel Administrative Record, June 16, 2011, at 2.

Moreover, the Postal Service identifies a number of proximate locations providing alternative access to retail postal services for affected customers. It also contends that alternate service arrangements will, if deferred, be disrupted and cause unnecessary expenditures. See Response at 4-5. Under these circumstances, the Application for Suspension is denied.

It is ordered:

The Application for Suspension of Determination, filed May 16, 2011, is denied.

By the Commission.

Ruth Ann Abrams
Acting Secretary

CONCURRING OPINION OF COMMISSIONER BLAIR

I agree with the Commission's decision to deny the application for suspension.

The Commission remains in a jurisdictional tussle with the Postal Service over its authority, or lack thereof, to hear appeals over closures of postal stations and branches. This will be an issue that the courts or Congress will ultimately decide.

However, I question the timing of this determination. The City of Akron has sought to prevent the Postal Service from closing this station and has filed for injunctive relief. I understand a hearing is set today to address this request. When presented with this issue in prior proceedings, the Commission has declined to act other than in a final order addressing the appeal. According to the schedule adopted by the Commission in this instant case, a final order will be issued by September 8, 2011.